IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/08/2003

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THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.360 OF 2000

Rajamanikam .. Appellant

-Vs-

State
through Deputy Superintendent
of Police
Karur .. Respondent

This criminal appeal is preferred under Section 374(2) of Cr.P.C. against the judgment of the learned I Additional Assistant Sessions Judge, Thiruchirapalli dated 01.02.2000 made in S.C.No.90 of 1992.

!For Appellant : Mr.K.Srinivasan

^For Respondent : Mr.V.Jaya Prakash Narayan,
Govt. Advocate (Crl. Side)

:JUDGMENT

The sole accused in a case of rape, who stood charged under Section 342, 384, 366 and 376(2)(a)(1), found guilty under all those charges and sentenced to undergo one year RI with a fine of Rs.1000/- in default 1 month RI under Section 342 IPC, 2 years RI with a fine of Rs.10 00/- in default 1 month RI under Section 384 IPC, 10 years RI under Section 366 IPC and 10 years RI along with a fine of Rs.5000/- in default 5 months RI under Section 376(2)(a)(1) IPC, has brought forth this appeal.

2. The short facts necessary for the disposal of this appeal can be stated thus:

a) The appellant Rajamanikam was working as Sub Inspector of Police of Vaiyampatti Police Station during the relevant time. He suspected P.W.2 Thekkamalai, the husband of P.W.1 Lakshmi, the victim, in a case of theft. He detained P.W.2 in the police station in the afternoon on 26.7.1989. P.W.1 came to know about the same on that night. On 27.7.1989 morning, two police constables attached to Vaiyampatti Police Station came to the house of P.W.1, called h er to the Police Station for enquiry and threatened with dire consequences. She came to the police station to see her husband and found him in a lockup room. P.W.2 sustained injuries all over the body. The appellant/accused and other constables assaulted P.W.2 in front of P.W.1.

They threatened him to disclose where he was keeping the amount alleged to have been stolen by him.

b) The appellant informed P.W.1 to wait near the union office, Vaiyampatti and he would come back for enquiry. Accordingly, P.W.1 waited near the union office. The appellant came there with mufti dress wearing shirt and lungi in a bicycle and threatened her. He took her in his cycle to a nearby place where he removed her cloths, pushed her down and committed sexual assault on her. He brought her back to the place where she was taken. P.W.12 Peter, a mechanic, found the appellant coming with the victim in a cycle. On seeing P.W.3, Mamundi, the brother of P.W.2, the appellant leaving the victim fled away from the scene of occurrence. P.Ws.1 and 3 came to the village and informed about the incident to the village President Babu and other important persons. All the village peoples gathered, took P.W.1 to the Deputy Superintendent of Police, Manaparai and lodged a complaint under Ex.P.15. In turn, the Deputy Superintendent of Police directed them to wait at Vaiyampatti Police Station.

c) On 27.7.1989 at about 6.30 p.m., on the strength of Ex.P.15, a case was registered in Crime No.153/89 under Sections 376 and 379 IPC against the accused by P.W.27 Vadivel. The same was also informed to the Superior officials. On 28.7.1989, P.W.1 was produced before P.W.29 Dr. Thilakavathy attached to the Government Hospital, Manaparai, who examined P.W.1 at about 5.40 p.m. P.W.29 has issued Ex.P.34 Accident Register. On 29.07.1989 the case in Crime No.153/89 was forwarded from the Inspector of Police, Vaiyampatti Police Station to the Sub Collector, Karur District. P.W.31 Ashok Ranjan Mohaithi, the Sub Collector took the same for investigation, since this is a complaint against the police official while discharging his official duty as per 1 45 Police Standing Order. P.W.31 proceeded with investigation from 29 .7.1989. He conducted preliminary enquiry. He found that there was a case of rape and sent a report to the Collector, Karur District and proceeded with further investigation summoning the witnesses. P.W.31 conducted Test Identification Parade on 23.12.1989 and prepared a report under Ex.P.39.

d) On his transfer, the successor in office took charge and investigated the matter. He found that there was a case of rape along with other offences. He filed a private complaint on 27.10.1991 as per G.O. Ms.No.1521 dated 22.10.1990 before the Chief Judicial Magistrate, Trichy. The case was committed to the Court of Sessions and it was numbered. It was transferred to the I Assistant Additional Sessions Judge, Tiruchirapalli for the purpose of trial.

3. In order to prove the charges levelled against the accused, the prosecution has examined 32 witnesses and marked 42 exhibits and three M.Os. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses, which the accused/appellant denied as false. No defence witness was examined. On consideration of the rival submissions made and scrutiny of the materials available, the trial court found the accused guilty under Sections 342, 384, 366 and 376(2)(a)(1) IPC and sentenced to undergo imprisonment as referred to above. Hence, the appellant has brought forth this appeal.

4. Advancing arguments on behalf of the appellant, the learned counsel Mr.K.Srinivasan made the following submissions for consideration by this Court.

The whole case of the prosecution was one foisted against the appellant, who was working as Sub Inspector of Police at Vaiyampatti Police Station during the relevant period. A case came to be registered against P.W.2 for theft in crime No.152/89. He was taken to custody on 26.7.1989 and was in police lock up. P.W.1 on coming to know about the same, in order to save her husband from the rigour of law has come forward with a false story as if she was raped and her jewels were also extorted. There was a specific accusation against the appellant that he extorted the jewels of P.W.1. Even in her chief examination, she has stated that she handed over the jewels to the constables and not to the appellant. But, in her complaint in the police station, she averred that the jewels were extorted from her by the appellant after the commission of offence of sexual assault. This would clearly falsify the whole accusation of extortion of jewels. The next charge that was faced before the lower court was one for abduction that he took away the victim for the purpose of committing rape. It was not the case of the prosecution that he took the victim from the Police Station, but he asked her to wait nearby the Vaiyampatti Union Office for conducting enquiry and this itself would improbablise the case of the prosecution, since no enquiry could be conducted in a public place that too in front of Union office, and hence, even from the evidence available, it would be clear that the case under Section 366 IPC was not made out.

5. Added further the learned counsel that there was a grave charge against the appellant that he committed sexual assault on P.W.1; that the case of the prosecution was that he made her wait near the union office and that too at about 1.00 p.m.; that the way in which the prosecution has brought forth the case was that he took her by placing her in front of the cycle; that he took her from the union office to a place aside; that the same would improbablise the case of the prosecution; that the said place where P.W.1 was waiting for the accused is a busy crowded locality; that the appellant was working as Sub Inspector of Police at that time, and hence, it would be highly improbable that he took her in his cycle to a aloof place and committed sexual assault on her; that the whole case of rape was thoroughly belied by the evidence of P.W.2; that P.W.2 has categorically deposed that P. W.1 came to the police station to meet him for the first time at about 5.00 p.m. on 27.7.1989 and hence, the case of the prosecution that she came to the police station in morning and the appellant asked her to wait near the union office at 1.00 p.m. where from he took her to a aloof place and committed sexual assault on her was nothing but a false story; that even the medical evidence has not supported the prosecution case; that P.W.29 Doctor, who was examined by the prosecution, has categorically spoken to the fact that she did not find any symptom of rape; that she has also recorded a statement of P.W.1 victim, wherein P.W.1 has spoken about the attempt of rape, but not the act of rape; that this would also indicate the falsity of the evidence of P.W.1; that both the witnesses, namely, P.Ws.1 and 2, who were originally examined before the trial court, have turned hostile; that again on their application before the court, the same was scraped and the evidence was recorded for the second time, but both the witnesses have not tendered any explanation as to which led them to give evidence otherwise and not in the line of the prosecution case and turned hostile on the earlier occasion; that this would also cast a doubt on their evidence; that it is true that in a case of rape, the prosecution can rely on the evidence of victim/the prosecutrix, but in this case, her evidence

was not free from doubt and that her evidence has been thoroughly belied from the evidence of P.W.2 . Under the stated circumstances, it would clearly indicate that she has come forward to give a false evidence in order to make her husband escape from the rigour of law, and thus, the lower court without proper appreciation of the evidence available has come to a conclusi on that the appellant has committed the said offence and in view of all these reasons, the appellant is entitled for an acquittal in the hands of this Court.

6. Strongly opposing all the contentions put forth by the appellant's side, the learned Government Advocate (Criminal Side) would contend that the lower court only on appreciation of the evidence has found the accused guilty; that P.W.1 victim has categorically deposed and narrated the whole incident; that she has given a cogent evidence and it would be sufficient in a case of rape like this; that P.W.2's evidence is of no consequence; that P.W.2 was enquired by the Revenue Divisional Officer within a short span of time where he has clearly spoken that his wife came to the police station in morning; that the evidence given by him before the court after a decade need not be given much weight; that the medical evidence adduced through P.W.29 Doctor and the accident register Ex.P.34 would clearly indicate that the act of rape was completed; that this medical evidence coupled with the evidence of P.W.1 would clearly indicate that the accused/appellant, who was the Sub Inspector of Police at that time and was to protect the law, has committed sexual assault on the victim; that the prosecution has also proved through P.W.1's evidence that it was the appellant who took her to a aloof place and committed the act of rape; that the prosecution has produced necessary evidence for proving the offence of extortion by the appellant/accused, and thus, the lower court has elaborately discussed both factual and legal aspects in the matter and has arrived at a correct conclusion, and hence, the judgment of the lower court has got to be confirmed.

7. This Court paid its full attention on the rival submissions made and made a close scrutiny of the materials available.

8. The gist of the prosecution case as could be seen above was that the appellant being the Sub Inspector of Police of Vaiyampatti Police Station taking advantage of the fact that P.W.2, the husband of the victim P.W.1, was detained in the lockup room in connection with the case of theft registered in that station, and on the guise of enquiry asked P.W.1 victim to wait near the union office at 1.00 p.m. on 27.7.1989; that the appellant went to the said place in mufti dress and took P.W.1 in his cycle forcibly to a place aside and committed sexual assault on her; that after commission of offence, he took her back in the cycle and on seeing P.W.3, the brother of P.W.2, he fled away from that place with his cycle; that the same was informed to the villagers and all gathered and seized the police station; that pursuant to the complaint under Ex.P.15 to the Deputy Superintendent of Police, a case came to be registered at Vaiyampatti Police Station; that subsequently, the matter was entrusted to P.W.31, Sub Collector, Karur; that after getting necessary permission from the District Collector, he conducted enquiry and a complaint was lodged before the Chief Judicial Magistrate, Tiruchirapalli.

9. Admittedly, a case for theft was registered against P.W.2, the husband of P.W.1 victim alleging that he had stolen the money at the time of an accident. He was also kept in the lockup room of Vaiyampatti Police Station. P.W.1 has deposed that she came to know about the same the very night, namely on 26.7.1989. But, next day, two constables from the said

Police Station came over to the house of P.W.1, threatened her to tell about the amount stolen by her husband and further directed her to come to the police station. Accordingly, she went to the police station on 27.7.1989 at 10.00 a.m. and she saw her husband being tortured. The victim further added in her evidence that the accused appellant informed her that further enquiry was needed and she should wait near the Vaiyampatti union office at about 1.00 p.m., and accordingly, she waited and the accused came in a mufti dress in a bicycle, forcibly took her by placing her in front of the cycle, took her to a place aside, removed her cloths, pushed her down and had sexual intercourse. A careful analysis of the evidence of the victim, who is sufficiently aged and matured, would clearly reveal that she has given a graphic narration of the incident that had taken place, which has inspired the confidence of the Court.

10. The contention of the appellant's side that in order to make her husband escape from the rigour of law and to bring home out of the case of theft, she has come forward with a false case of rape against the appellant cannot be countenanced for more reasons than one. At the time of occurrence, admittedly, the appellant was the Sub Inspector of Police in that area. P.W.2 was a Cobbler. It is needless to say that P.W.1 and P.W.2 were belonged to have-not category. Under such circumstances, it would be highly difficult for a woman like P.W.1 to come forward with a case alleging that the Sub Inspector of Police has raped her. It is pertinent to point out that the appellant, who was the Sub Inspector of Police, was seen by P.W.12, a mechanic, when he was coming in his cycle along with the victim at the relevant time. No reason or circumstance is brought forth by the appellant's side to suspect the evidence of P.W.2. It remains to be stated that on the day of occurrence, the appellant was on duty as Sub Inspector of Police of Vaiyampatti Police Station and no explanation was tendered by the appellant's side as to what made him to go out of Police Station and that too in a cycle and how he was found with a victim at that time. The above circumstances would clearly corroborate the evidence of P.W.1 that she was taken from the place to the place of occurrence and was brought back. The victim was subjected to medical test. P.W.29 Doctor has examined the victim on 28.7.1989 at about 5.40 p.m. P. W.29 has issued accident register, which was marked as Ex.P.34. Ex.P.3 4 reads as follows:

"Alleged to have been attempted rape by a known person on 27.7.89 at about 1 p.m. At Vaiyampatti. Patient conscious. Answering to question, C/o. Pain in the breasts and all over the body.

O/E: A linear abrasion of above 2 cms x = L on the left cheek present.

No other external injury seen on the chest, neck, abdomen, thighs etc.

She has deposed that no seminal stain was found. The mere absence of semen on the cloth of the victim does not show the story of rape stated by the prosecutrix not true. The seminal omission is not necessary to establish rape, but what was necessary was the penetration. It remains to be stated that in a case like this, the Court has to look into the evidence of the prosecutrix. If the evidence of the prosecutrix inspires the confidence of the Court, the Court can well accept her evidence to sustain a conviction. It is true that the chemical examination has not brought forth the presence of seminal stain, but the Doctor's certificate recorded above would clearly reveal that she was examined the very next day. Apart from that, an enquiry was conducted by the R.D.O., before whom, at the earliest point of time, she has narrated the whole incident and the blood stained cloths were also

produced before him.
11. The contention of the appellant's side that P.W.2 has stated that she came to the police station for the first time at about 5.00 p. m. on the date of occurrence, and hence the whole theory of rape by the prosecution was an utter falsehood has got to be discountenanced for the simple reason that within a short span of time, P.W.2 was enquired by R.D.O., where he has stated that P.W.1 came to the police station in the morning and not in the afternoon. It remains to be stated that P.W.2 was examined before the Court after a decade. As rightly pointed out by the learned Government Advocate in a case like this, the Court need not much look into the evidence of other witnesses, while the evidence of the prosecutrix is trusworthy and inspires the confidence of the Court. An injury was found on the cheek of the P.W.1. According to P.W.1, the said injury was caused at the time of occurrence. The evidence of P.W.29 that sperms were found, but it would have been possible by the act that had preceded to the alleged occurrence and it cannot be clearly stated since the occurrence has taken place 27 hours before and thereafter medical examination was done. In view of the evidence adduced through P.W.1 victim, the Court is of the considered view that no importance could be attached to this part of the evidence. The evidence of P.W.1, the medical evidence, the wound certificate and all other circumstances attendant would be pointing to the sexual assault committed on P.W.1.
12. The Apex Court had held in a decision reported in AIR 1990 SC 65 8 (STATE OF MAHARASHTRA VS. CHANDRAPRAKASH KEWALCHAND JAIN), which reads as follows:
"A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under S.118 of Evidence Act and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mid and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to S.114 which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence. Therefore, ordinarily the evidence of a prosecutrix who does not lack understanding must be accepted. The degree of proof required must not be higher than is expected of an injured witness. Ordinarily the evidence of a

prosecutrix must carry the same weight as is attached to an injured person who is a victim of violence, unless there are special circumstances which call for greater caution, in which case it would be safe to act on her testimony if there s independent evidence lending assurance to her accusation.
To insist on corroboration except in the rarest of rare cases is to equate a woman who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her story of woe will not be believed unless it is corroborated in material particulars as in the case of an accomplice to a crime. Ours is a conservative society where it concerns sexual behaviour. Ours is not a permissive society as in some of the Western and European countries. Our standard of decency and morality in public life is not the same as in those countries. It is, however unfortunate that respect for womanhood in our country is on the decline and cases of molestation and rape are steadily growing. An Indian woman is now required to suffer indignities in different forms, from lewd remarks to eveteasing, from molestation to rape. Decency and morality in public life can be promoted and protected only if the Courts deal strictly with those who violate the societal norms. The standard of proof to be expected by the Court in such crimes are generally committed on the sly and very rarely direct evidence of a person other than the proxecutrix is available. Courts must also realise that ordinarily a woman, more so a young girl, will not stake her reputation bny levelling a false charge concerning her chastity.
But when such a crime is committed by a person in authority, e.g. a police officer, the Court's approach should not be the same as in any other case involving a private citizen. By our criminal laws wide powers are conferred on police officers investigating cognizable offences. The infrastructure of our criminal investigation system recognises and indeed protects the right of a woman to decent and dignified treatment at the hands of the investigating agency."
13. In the instant case, the lower court has found the accused guilty under Section 376(2)(a)(1) IPC as he was the Sub Inspector of Police at that time and has given minimum punishment of 10 years RI with fine of Rs.5000/- in default 5 months RI. At the time of occurrence, the accused, who was the Sub Inspector of Police, was duty bound to protect the interest of Society. But it is highly a matter of shock to see that he had committed such a grave crime and the lower court has awarded minimum punishment available. Hence there is nothing to interfere in the said conviction and sentence. The conviction and sentence imposed by the lower court on the accused under Section 376(2)(a)(1) IPC are confirmed. Insofar as Section 366 IPC is concerned, the lower court has awarded punishment of 10 years RI. The Court is of the considered view that under the facts and circumstances of the case, the sentence awarded under Section 366 IPC does not require any interference. Hence, the conviction and sentence imposed by the lower court on the accused under Section 366 IPC are also confirmed. The lower court has awarded compensation of Rs.2,00,000/- payable by the accused to P.W.1 Lakshmi. Considering the facts and circumstances of the case, the Court is of the view that the said compensation awarded by the lower court is justified, and hence, the same is confirmed.
14. Admittedly, the case was registered against P.W.2 and he was in the lockup room on that day. The appellant, who was the Sub Inspector of Police, was expected to proceed with the case registered for theft against

P.W.2, and instead he has taken undue advantage of the situation and has committed heinous crime in question. A detailed enquiry was also conducted by R.D.O within a short span of time and he has also filed a report. P.W.1 has categorically spoken to the fact that she was asked by the appellant to wait near the union office at 1.00 p.m. and the appellant, who came there in the mufti dress, has taken her from that place in his cycle to a place where he committed the offence of rape. Therefore, it would be indicative of the fact that he has taken her only with an intention of having forcible sexual intercourse.

15. The lower court on the available evidence has come to a conclusion that he has committed the offence of taking her to have forcible sexual intercourse and has committed the offence of rape also, which would fall under Section 366 IPC. Insofar as the extortion of jewels was concerned, this Court is of the considered view that the prosecution has not proved the said charge beyond reasonable doubt. A charge has been specifically framed that the appellant extorted the jewels from P.W.1. But, P.W.1 has categorically spoken in her evidence that the jewels were obtained from her by the two constables and not the accused/appellant. Hence, this would clearly indicate that it was not the accused who got the jewels from P.W.1, and hence, it has to be stated that the said charge of extortion was not proved.

16. The lower court found the accused/appellant guilty under Section 342 IPC on the ground that he has illegally confined P.W.2 Thekkamalai and sentenced him to undergo one year RI with fine of Rs.1000/- in default 1 month RI and directed the accused to pay compensation of Rs.50000/- to P.W.2. In view of the evidence, this court is of the view that the said portion of judgment has no legal basis and therefore, the conviction of the appellant under Section 342 IPC and the compensation of Rs.50000/- payable by the accused to P.W.2 are set aside. Insofar as the conviction and sentence imposed by the lower court on the accused under Section 384 IPC are concerned, this Court is of the view that the conviction and sentence imposed by the lower court on the accused under Section 384 IPC have got to be set aside. Accordingly, it is set aside.

17. In the result, this criminal appeal is partly allowed setting aside the conviction and sentence imposed by the lower court on the accused under Sections 342 and 384 IPC and also the compensation of Rs.5 0000/- payable by the accused to P.W.2. The accused is acquitted of the charges levelled against him under Sections 342 and 384 IPC. The conviction and sentence imposed by the lower court on the accused under Sections 366 and 376(2)(a)(1) IPC and the compensation of Rs.2,00,000/- payable by the accused to P.W.1 are confirmed.

Index : Yes
Internet : Yes
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To
1. The I Addl. Sessions Judge, Tiruchirapalli
2. The I Addl. Sessions Judge, Tiruchirapalli
through the Principal Sessions Judge, Tiruchirappalli
3. The Superintendent, Central Prison, Trichy
4. The Public Prosecutor, High Court, Madras

5. Mr.V.Jaya Prakash Narayan, Govt. Advocate (Crl. Side)
High Court, Madras
6. The Deputy Inspector General of Police, Chennai-4
7. The Deputy Superintendent of Police, Karur